

REGULATE TEMPERATURE IN NURSING HOMES

Mitchell Bean, Director
Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

House Bill 5537 (Substitute H-2)

Sponsor: Rep. Gary Woronchak

Committee: Senior Health, Security and Retirement

First Analysis (6-23-04)

BRIEF SUMMARY: The bill would require that, within three years after the effective date of this legislation, all nursing homes maintain a temperature of not less than 71 degrees Fahrenheit or more than 81 degrees Fahrenheit. That temperature would have to be maintained at all times, and in all areas of the building accessible to residents, employees, and visitors, except for the kitchen and laundry room. [This is currently a federal regulation for all nursing homes certified after 1990. It also is embodied in a state law enacted in 2002, which requires this temperature range for resident rooms, but the standard is only applicable to facilities planning “construction, additions, or modernizations with capital expenditures of \$1,000,000 or more.”]

FISCAL IMPACT: House Bill 5537 (H-2) would increase Medicaid expenditures as heating and cooling costs for nursing homes are allowable, reimbursable variable costs through the Medicaid program. However, the amount of increase in Medicaid expenditures is unknown. In Fiscal Year 2002-2003, Medicaid expenditures totaled almost \$1.1 billion for nursing homes and county medical care facilities.

House Bill 5537 (H-2) would also result in increased revenue for the state, if nursing homes fail to comply with the provisions of the bill, as nursing homes are subject to a civil penalty up to \$1,000 for each violation, or for each day that a violation continues.

THE APPARENT PROBLEM:

Safe temperatures levels in nursing homes are necessary to preserve the life and ensure the comfort of the homes’ residents. Under the federal law [42 CFR Part 483.483.15(h)(6)], facilities initially certified after October 1, 1990 must maintain a temperature range of 71 to 81 degrees Fahrenheit. The term “comfortable and safe temperature levels” means that the ambient temperature should be in a relatively narrow range that minimizes residents’ susceptibility to loss of body heat and risk of hypothermia, or susceptibility to respiratory ailments and colds. See [Background Information](#) below. No explicit federal temperature standards for facilities certified before October 1, 1990 exist, however these facilities still must maintain safe and comfortable temperature levels.

Under Michigan’s rules [R325.21320], a home must provide a safe heating system in accord with applicable law, and a room in a home used for patients must be maintained at

a regular daytime temperature of not less than 72 degrees Fahrenheit, measured three feet above the floor. There is no maximum or range of temperature described in the rule. Further, the legislature adopted Minimum Design Standards for Health Care Facilities by reference on December 30, 2002 [Public Act 683 of 2002, MCL 333.20145], and those standards specify minimum and maximum temperature levels for nursing homes, including a range of 71 to 81 degrees for resident rooms, and also for isolation rooms. Other rooms in the facility must be warmer—a minimum either of 75 degrees (for dining rooms, activity rooms, physical therapy and occupational therapy rooms, clean workrooms and holding areas, and bathing and toilet rooms) or 80 degrees (for laundry rooms and food preparation rooms). There are no maximum temperature levels specified for these rooms. However, these minimum design standards apply only to facilities that are planning “construction, additions, and modernizations...with a capital expenditure of \$1,000,000 or more.”

In June 2004, volunteers at the University of Michigan Poverty Law Project surveyed Michigan’s 431 nursing homes (achieving responses from 349 facilities) to learn that 47 percent provide air conditioning in all residential rooms—less than half. Project staff point out that fully 75 percent of all Michigan nursing homes were initially certified before October, 1990, and therefore are not bound by the federal requirement to maintain a temperature range between 71 and 81 degrees. Further, few if any are planning million dollar capital expenditure projects, which would require them to come into compliance with Public Act 683 of 2002.

According to Elder Law of Michigan, Inc. state nursing home inspectors received complaints about, and also monitored, 35 of Michigan’s nursing homes having a total of 4,587 beds, for high heat conditions in the summer of 2002. Eighteen (18) of these nursing homes were cited for heat related violations in 2002—most for inadequate resident hydration. In one case a year earlier, on June 15, 2001, a 78-year-old resident of Parkridge Associates’ Northland Nursing Center located at 21630 Hessel in Detroit died of prolonged exposure to excessive heat (called hyperthermia). During a three-day period, temperatures in Detroit ranged from 87 to 90 degrees, and several residents of the home experience problems with the heat. According to the Office of the Attorney General, which charged the operator, medical director and nursing director with involuntary manslaughter, the home had a shortage of fans, the windows could not be opened, and rooms were without air-conditioning.

Legislation has been introduced that would, in effect, apply the existing federal temperature standard for nursing homes built after 1990, and Michigan’s new construction standard which mirrors the federal standard, to all nursing homes within three years.

THE CONTENT OF THE BILL:

The bill would add a new section to the Public Health Code to require that, within three years after the effective date of this legislation, all nursing homes maintain a temperature of not less than 71 degrees Fahrenheit or more than 81 degrees Fahrenheit as measured

three feet above the floor. That temperature would have to be maintained at all times, and in all areas of the building accessible to residents, employees, and visitors, except for the kitchen and laundry room.

Under the bill, if a nursing home had a separate heating and cooling system for resident rooms that allowed a resident to control the temperature, then the resident could maintain his or her room at any level desired, unless the temperature adversely affected the health, safety, or comfort of any resident. If there were adverse effects, the nursing home would be required to intervene and take appropriate action to keep the residents safe and comfortable.

Within 90 days after the effective date of the legislation, the administrator of a nursing home would be required to develop written policies and procedures for maintaining safe and comfortable temperatures, and submit a copy of those written policies to the Department of Community Health for filing with its most recent license or renewal application. The policies and procedures would have to include at least all of the following:

- a) measures to be taken to ensure the health, safety, and comfort of residents in the nursing home;
- b) identification of circumstances that required notification of the nursing home administrator or a physician, and the appropriate time-frames for those actions; and,
- c) identification of available sites within or outside the nursing home to which residents could be relocated, if temperatures presented a threat to their health and safety.

Under the bill, a nursing home would be required to have an existing agreement or plan for emergency situations, including, but not limited to, an agreement or plan for the provision of emergency services and repairs, in the event of an electrical, heating, ventilation, or air conditioning failure or malfunction. The nursing home would also be required to keep a copy of the written agreements or plans on the premises, and make them available to the department upon request. Repair work that was necessary to maintain the temperature within the range would have to be completed within 48 hours or less. If, for reasons beyond the nursing home's control, repairs could not be completed in a timely manner, the nursing home would be required to take the appropriate actions, as provided in its written policies.

The bill would require that if the temperature were outside the range, the nursing home immediately evaluate the situation, monitor the residents, and take appropriate action to ensure the health, safety, and comfort of its residents. The nursing home also would be required to document all action taken, and maintain that documentation on the premises for a minimum of five years, making it available to the department upon request.

If more than one complaint were received regarding a violation of this section of the law, the department would be required to begin an investigation within 48 hours after

receiving the complaint, make a determination within 30 days, and issue a correction notice, if one were necessary, as provided under the law.

Failure to comply with the bill's provisions could subject a nursing home to a civil fine of not more than \$1,000 for each violation or for each day that a violation continued.

MCL 333.21735

BACKGROUND INFORMATION:

The federal standard that regulates temperature levels in nursing homes is interpreted in a way that provides some leeway in both very warm and very cold regions of the country. For facilities certified after October 1, 1990, temperature may exceed the upper range of 81 degrees Fahrenheit for facilities located in geographic areas of the country (primarily the northernmost latitudes) where that temperature is exceeded only during rare, brief unseasonable hot weather. This interpretation applies in cases where it does not adversely affect resident health and safety, and enables facilities in areas of the country with relative cold climates to avoid the expense of installing air conditioning equipment that would only be needed infrequently. In a similar interpretation for hot regions, the temperatures in nursing homes may fall below 71 degrees Fahrenheit if that temperature is exceeded only during brief episodes of unseasonable old weather. However, again, minimum temperatures must be maintained at a sufficient level to minimize risk of hypothermia and susceptibility to loss of body heat, respiratory ailments, and colds.

ARGUMENTS:

For:

Michigan nursing home residents need to know their health and safety is protected by a state standard that sets both a minimum and maximum temperature level. Currently, only a minimum temperature standard applies to most nursing homes in Michigan, because most homes were built before 1990, and need not comply with the federal temperature standard of between 71 and 81 degrees. According to Elder Law of Michigan, Inc. state nursing home inspectors received complaints about, and also monitored, 35 of Michigan's nursing homes having a total of 4,587 beds, for high heat conditions in the summer of 2002. Eighteen (18) of these nursing homes were cited for heat related violations in 2002—most for inadequate resident hydration. In one case a year earlier, on June 15, 2001, a 78-year-old resident of Northland Nursing Center in Detroit died of prolonged exposure to excessive heat. She and others in the home experienced dehydration and hyperthermia when summer temperatures in Detroit reached between 87 and 90 degrees during a three-day heat wave. High heat and humidity sap the energy of frail residents, reducing their often limited energy and mobility, increasing hydration and other care needs, and as a result, worsen other health problems, such as cardiovascular and respiratory conditions, and mental illness. A standard temperature level that applies to all nursing homes in Michigan—not only to those built after 1990, or those planning million-dollar capital expenditure improvements—will help ensure the health and safety of nursing home residents.

Against:

The cost of compliance with this legislation will be high—both to the operators of nursing homes, and to the state, since many of these costs are reimbursable under Medicaid. Michigan’s reimbursement per Medicaid patient day for nursing home providers already falls short by an estimated \$7.64 each day, a shortfall calculated by BDO Seidman, LLP Accountants and Consultants for the American Health Care Association (based on 2001 rate and cost data). Retrofitting older nursing homes with new heating and air-conditioning units will be cost prohibitive.

Response:

While it is true that slightly less than half of all nursing homes have air-conditioned resident rooms according to a survey completed by the Poverty Law Project, this bill does not mandate air-conditioning in nursing homes. Compliance with the temperature standard set in this bill can be achieved without the installation of air-conditioning in most areas of the state, using various heating and cooling strategies to keep facilities at safe temperature for residents, caregivers, and visitors. They include improvements in ventilation, insulation, and the use of new environmentally friendly technologies as alternatives. In addition, nursing home operators are advised to keep the air circulating (with fans and opened screened windows, if not air-conditioning); and to draw all shades, blinds, and curtains in rooms when they are exposed to direct sunlight. To take advantage of these and other approaches, this law would give providers three years to comply with the new temperature standard.

POSITIONS:

The State Long-Term Care Ombudsman supports the bill. (6-17-04)

The Michigan Advocacy Project supports the bill. (6-17-04)

Elder Law of Michigan supports the bill. (6-17-04)

The Michigan Poverty Law Project supports the bill with amendments. (6-17-04)

The American Association of Retired People supports the bill with amendments. (6-17-04)

The Michigan Department of Community Health supports the bill in concept. (6-17-04)

The Michigan Association of Homes and Services to the Aging opposes the bill. (6-17-04)

The Michigan Association of Counties opposes the bill. (6-17-04)

Legislative Analyst: J. Hunault
Fiscal Analyst: M. Alston

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.